



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/164
27 April 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 11 (a)

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
TORTURE AND DETENTION**

**Note verbale dated 26 April 2001 from the Permanent Mission of Brazil
to the United Nations Office at Geneva addressed to the Chairperson of
the Commission on Human Rights**

1. The Permanent Mission of Brazil to the United Nations Office and other international organizations in Geneva presents its compliments to Ambassador Leandro Despouy, Chairman of the fifty-seventh session of the Commission on Human Rights, and has the honour to forward herewith a copy of written comments of the Government of Brazil* on the report of the Special Rapporteur on Torture on his visit to Brazil (E.CN.4/2001/66/Add.2).
2. The Permanent Mission of Brazil would like to request these written comments to be circulated to all member and observer States as an official document of the fifty-seventh session of the Commission on Human Rights and to be inserted on the Web site of the Office of the High Commissioner for Human Rights accordingly.

* Reproduced as received, in the language of submission only.

Annex

**Comments by the Brazilian Government in response to the
report by Sir Nigel Rodley, the Special Rapporteur on
Torture of the United Nations Commission on Human Rights
(document E/CN.4/2001/66/Add. 2)**

Geneva, April 11, 2001

The Brazilian Government would like to thank the Special Rapporteur on Torture, Sir Nigel Rodley, for having accepted the invitation to undertake a mission to Brazil in August and September of 2000, and for preparing the detailed report on that visit that was presented to the Fifty-seventh session of the Commission on Human Rights (CHR) in Geneva, April 11, 2001. Sir Nigel visited five States in Brazil and the Federal District. He was ensured full access to all detention facilities, including the right to unannounced visits at police stations, pre-trial detention centers and prisons. The Special Rapporteur held meetings with President Fernando Henrique Cardoso, the Minister of Justice and officials representing the three branches of power at the federal and state level in those states he visited, in addition to representatives from non-governmental organizations.

2. The promotion and protection of human rights is one of the priority public policies espoused by the Brazilian Government. Within this framework, the fight against torture has merited the special attention of the Secretariat of State for Human Rights, the body responsible for such matters within the Ministry of Justice. The Federal Government has tackled this issue in an objective and transparent manner and has recognized the existence of problems in the penal justice system. This was made clear in Brazil's initial report on the implementation of the

Convention against Torture (document CAT/C/9/Add. 16) to be presented verbally to the Committee against Torture (CAT) in Geneva, in the upcoming month of May. This constructive stance is also clearly evinced by the activities of the Brazilian delegation in the working group charged with preparing the Optional Protocol to the Convention against Torture, designed to establish a preventive mechanism through visits to detention facilities.

3. Brazil defends cooperation and dialogue with all of the United Nations conventional and extra-conventional human rights mechanisms and organizations. The Brazilian Government hopes that all countries will welcome the Commission's Special Rapporteurs and will cooperate with them as they carry out their mandates, quite aside from any assessment that such countries may make of their own domestic reality. Brazil believes that no country, regardless of its stage of development, can place itself above the scrutiny of the international community. To do so would be to deny the absolute value of the universality of human rights enshrined in the Vienna Declaration and Program of Action (1993).

4. Sir Nigel Rodley's visit was not the first trip by a Human Rights Commission Special Rapporteur to Brazil. In the past, Brazil has received visits from Special Rapporteurs looking into the sale of children, child prostitution and pornography; and Special Rapporteurs on violence against women; on racism, on racial discrimination, on xenophobia and on related forms of intolerance; and on human rights and toxic waste. All of these people were free to do as they wished. The conclusions and recommendations that they subsequently presented to the Brazilian Government proved to be most useful in improving the diagnosis and identification of

specific measures for each of their respective fields of expertise.

5. The 1988 Federal Constitution provides a legal framework that is not only compatible with but also absolutely uncompromising regarding the observance of human rights in Brazil. There are a number of provisions in the Constitution that refer to universal standards and principles in the field of human rights. Furthermore, the Constitution fully recognizes the enforceability of international human rights treaties. Brazil is also a party to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and to the four principal United Nations Conventions on Human Rights.

6. On the domestic and international front, Brazil was one of the first countries to adopt a National Human Rights Program (the PNDH), in response to the recommendation emerging from the World Conference in Vienna (1993). Brazil's National Program, launched in 1996, led to broad participatory efforts that gave civil society organizations the opportunity to provide suggestions and make contributions during seminars that were held in each of the most important state capitals in Brazil. The PNDH is currently under revision, with a view to its enhancement and to the full incorporation of economic, social and cultural rights. On the conclusion of this phase of consultations with civil society (under the care of the Center for Studies on Violence at the University of São Paulo) the Secretariat of State for Human Rights initiated a final review of the proposals and is holding consultations with the interested Ministries. The topic of the eradication of torture will obviously be included among the priorities of the new PNDH.

7. The Federal Government has not been remiss with regard to the practice of torture in Brazil either. A number of important steps have been taken in recent years with a view to adapting Brazil's legal framework to international norms and standards and to the obligations assumed by the Brazilian State pursuant to international human rights treaties. The measures introduced by the Government have also been designed to introduce behavioral changes in society vis-à-vis the crime of torture and to promote the protection of the rights of persons submitted to any form of detention or under criminal investigation.

8. The enactment of the law that characterizes torture as a crime (Law 9.455, April 7, 1997) was a benchmark in the fight against torture in Brazil. In practical terms, however, the proper authorities have not enforced the law in a satisfactory fashion. In many cases since 1997, no criminal indictment has been issued in response to allegations of torture, either because the Public Ministry filed no complaint or because the judges changed the nature of the complaint to one involving less serious crimes, such as bodily harm or abuse of authority. There seems to be a widespread problem: torture is not understood to be a serious crime against a democratic state that embraces the rule of law, perhaps because torture affects underprivileged segments of society almost exclusively. This situation requires not only that decisive steps be taken to raise the awareness and change the mentality of people at the heart of Brazilian society, but also demands that the legal community be made aware of the issue in order to create jurisprudence on the enforcement of the Law on Torture.

9. The Secretariat of State for Human Rights lent its support to the Superior Tribunal of Justice regarding its

decision to hold an International Seminar on the Enforcement of the Law on Torture, in Brasilia, from October 30 to November 1, 2000. This event was also co-sponsored by the National Forum of Police Ombudsmen and the Human Rights Commission in the Chamber of Deputies¹. The seminar, the first of its kind in Brazil, brought together more than a thousand participants, including domestic and international jurists and specialists. The event clearly demonstrated the complexity of the fight against torture in Brazil, a struggle that will have to involve the general public and all the branches of Government. At the end of the seminar, the co-sponsors signed a broad commitment to efforts designed to fight the practice of torture.

10. The Federal Government wishes to do something concrete with this commitment and broaden its scope to include the country at large. For this reason the Federal Government will launch a national campaign against torture in the upcoming month of May. The campaign will be publicized on television channels, radio stations, and in newspapers and magazines. The idea is to use films, advertisements and posters to mobilize the Federal, state and local governments, the legislature and judiciary, the Public Ministry, other members of the legal community and a broad spectrum of civil society organizations as parties to a national pact against torture. This is the first initiative of its kind ever adopted by Brazil's Federal government in consultation with key circles in organized civil society.

11. The media campaign will be launched simultaneously with the inauguration of a clearinghouse for complaints and denunciations that can be reached at a toll-free 800 number from anywhere in Brazil. The National Human Rights Movement, a non-governmental organization that will sign a

¹ Translator's note: Brazil's Lower House in Congress.

cooperation agreement with the Secretariat of State for Human Rights in the near future, will run the clearinghouse. Complaints received by the clearinghouse and deemed to be credible will be referred to state-government agencies and non-governmental organizations that have joined the campaign and the national pact against torture. They, in turn, will take the proper steps and/or follow up on investigations and criminal proceedings.

12. On the initiative of the Secretariat of State for Human Rights, the Council to Protect the Rights of Human Beings (CDDPH), an organization presided over by the Minister of State for Justice and made up of representatives from government agencies and civil society organizations, met on April 11, 2000. The purpose of the meeting was to set up a standing Commission to fight torture. The members of the Commission will include senior officials, jurists and specialists in the field of torture who will lend additional support to the national campaign, make suggestions to the Federal Government and follow up on denunciations of torture throughout Brazil. Their duties will include on-site visits. All the data compiled by the clearinghouse will be placed at the disposal of the Commission and will be disseminated via the National Human Rights Network, connected to the Secretariat of State for Human Rights. The network's home page (<http://www.rndh.gov.br>), to go on-line on May 13th this year, will allow anyone to present complaints of torture via the Internet. Furthermore, organizations in Brazil that have joined the pact will be able to access the clearinghouse database on line.

13. Four regional training courses for members of the legal community will be held in 2001 as part of the national campaign against torture; the exact dates and

locations have not yet been defined. The educational materials for the training courses will include the Portuguese version of the *Torture Reporting Handbook* produced by the University of Essex in the United Kingdom. The Handbook will be tailored to the Brazilian legal system and to the international human rights framework. At the same time, the Secretariat of State for Human Rights -- in coordination with the Public Safety Secretariat at the Ministry of Justice, international organizations and cooperation agencies from abroad -- will lend its support to police training courses in human rights and modern investigative techniques. Similarly, the Secretariat of State for Human Rights will encourage a debate on the National Justice Secretariat's 2001 Action Plan, with a view to the implementation of policies designed to alleviate overcrowding and improve the material conditions of places of detention.

14. The Brazilian Government is currently examining the Special Rapporteur's report with care and in detail. A special working group has been set up for this purpose, comprising representatives of the Ministry of External Relations, the Secretariat of State for Human Rights and the National Secretariats for Public Safety and Justice at the Ministry of Justice. Although the report is harsh, the Brazilian Government feels it is a useful tool that will serve to guide discussions and help efforts to adopt and implement public policies to promote and protect human rights, particularly with regard to the fight against torture.

15. The thirty recommendations prepared by Sir Nigel Rodley at the end of his report include concrete suggestions and important conceptual assessments, which deserve more careful consideration. Brazil feels that the

presentation of the Special Rapporteur's report to the Commission on Human Rights does not represent the end of this process, but instead, marks the beginning of a new stage in the dialogue with Sir Nigel, which the Federal Government would like to strengthen and broaden. The Brazilian Government's preliminary comments in response to the Special Rapporteur's recommendations, found below, are presented in this spirit of cooperation and forthrightness:

(1) First and foremost, the top federal and state political leaders need to declare unambiguously that they will not tolerate torture or other ill-treatment by public officials, especially military and civil police, prison personnel and personnel of juvenile institutions. They need to take vigorous measures to make such declarations credible and make clear that the culture of impunity must end. In addition to giving effect to the subsequent recommendations, these measures should include unannounced visits by them to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment. In particular, they should hold those in charge of places of detention at the time abuses are perpetrated personally responsible for the abuses. Such responsibility should include, but not be limited to, the practice obtaining in some localities, according to which the occurrence of abuses during their period of authority will adversely affect promotion prospects and indeed should involve removal from office, which removal should not consist merely of transfer to another institution.

A declaration repudiating torture will be made by officials representing every level of the Federal and State Governments and all three branches of power on the occasion of the launching of the national campaign against torture. The organizations represented at the ceremony will formally

declare their accession to a national pact against torture. The pact will establish specific obligations for each of the participating organizations (in other words, dismissal of employees who have practiced acts of torture, visits to places of detention, etcetera), so that the political commitment that has been signed will take on a concrete meaning in the minds of the participants.

(2) The abuse by the police of the power of arrest without judicial order in "flagrante delicto" cases to arrest any suspect should be brought to an immediate end.

Abuse by the police of the power of arrest in *flagrante delicto* cases should be fought by strengthening the police ombudsmen's offices already in existence (there are 10) and by creating new ombudsmen's offices in the other states. An ombudsman's office should also be created for the Federal Police as a way to encourage those States that have not yet established any external mechanism to control their police forces to do so. All police academies should include a course on human rights in their curriculum. In response to Commitment 12 of the National Public Safety Plan, the National Public Safety Fund has allocated approximately R\$ 251 million for cooperation with Brazilian states in a number of areas, including professional training courses for the police. A project sponsored by SENASP, the International Red Cross, and the Embassy of the United Kingdom has already provided human rights training to 910 Brazilian policemen for a total cost of R\$ 451.000. In 2001, 390 policemen are expected to be trained at an estimated cost of R\$ 576.000.

(3) Those legitimately arrested in flagrante delicto should not be held in police stations beyond the 24-hour period required for obtaining a judicial warrant of

temporary detention. Overcrowding in remand prisons can be no justification for leaving detainees in the hands of the police (where, in any event, the conditions of overcrowding appear substantially to exceed even those in some of the most overcrowded prisons).

The practice of holding people in police stations for periods longer than the 24 hours established by law is directly related to the problem of overcrowding in prisons. A comprehensive set of steps must be taken, including the construction of new facilities, the refurbishment of current facilities, more systematic use of alternative sentencing (including the creation of alternative sentencing courts), reviews of the prisoner's procedural status (by bringing the legal community together in special mass sessions for the specific purpose of clearing the penal execution backlog), and the creation of special courts to handle chemical dependency. Furthermore, some states are closing down detention facilities in police stations; this trend deserves Federal Government support. One case in point: the DEPATRI facilities in São Paulo were deactivated on January 18, 2001, while police stations in Rio de Janeiro continue to be transformed into "delegacias legais" (please refer to the comment in response to recommendation 20). In São Paulo, prisoners awaiting trial are being transferred from police stations to temporary detention facilities (CDPs). Each CDP can hold 768 inmates. The primary purpose of the CDPs is to allow police jails to be deactivated. Thus far, the program has shut down detention facilities in the following police districts in the city of São Paulo: DEPATRI, the 6th, 15th, 21st, 22nd, 23rd, 30th, 42nd, 48th, 51st, 56th, 59th, 75th, 81st, 93rd and 95th districts.

(4) Close family members of persons detained should be immediately informed of their relatives' detention and be given access to them. Measures should be taken to ensure that visitors to police lock-ups, provisional detention facilities and prisons are subjected to security checks that are respectful of their dignity.

Brazilian law guarantees that family members of persons detained have a right to be informed, a fact that should be underscored in the training courses for *delegados* and the police. Procedures to be followed in searching family members of prisoners will be modified in order to respect the visitors' dignity. Installing metal detectors in detention facilities will enable the security checks to be changed. Such searches will then focus on the prisoners and not on their family members.

(5) Any person under arrest should be informed of his/her continuing right to consult privately with a lawyer at any time and to receive independent free legal advice where he/she cannot afford a private lawyer. No police officer shall at any time dissuade a person in detention from obtaining legal advice. A statement of detainees' rights, such as the Law on Penal Execution (LEP), should be readily available at all places of detention for consultation by detained persons and members of the public.

The right to consult an attorney is guaranteed by law and should be reiterated in training courses for *delegados*, police officers and prison officials. Public defenders offices at the federal and state levels should be reinforced by hiring additional lawyers. Those states that do not have such public defenders' offices should be encouraged to create them. A primer on the rights and duties of imprisoned people will be prepared as part of the

national campaign against torture. The primer will "translate" pertinent legal provisions (the Penal Code, the Penal Procedures Code and the Law on Penal Execution - LEP) into simpler language. This primer should be handed to each person at the time of his or her detention, and copies should be made available to family members, throughout Brazil. A primer on the rights and duties of prison guards is also worth considering.

(6) A separate custody record should be opened for any person under arrest, showing the time and reasons for arrest, the identity of the arresting officers, the time and reasons for any subsequent transfers, in particular to court or a Forensic Medical Institute, and the time a person is released from detention or transferred to a remand detention facility. The record or a copy of the record should accompany a detained person if he or she is transferred to another police station or a provisional detention facility.

The National Secretariat of Justice has included the creation of the Computerized Penitentiary System Program, or INFOPEN system, in its Action Plan for the year 2001. INFOPEN will be a national database with detailed information on the detention system and with an individual file on each prisoner, including their socio-biographic and criminal profile and information about their history while in custody. The Federal Government intends to set up an institutional arrangement to allow information to be cross-referenced with data from the SENASP system (INFOSEG: The Program for the National Integration of Information on the Justice System and Public Safety). The idea is to guarantee that the status in prison of each individual that enters into contact with the criminal justice system will be monitored from the moment in which they enter the

detention system (at a police station, remand center or temporary detention facility). This monitoring will continue as they are transferred to the prison system and will cover all internal transfers within a prison (including data regarding occasions on which they are taken for medical examinations or to court). Monitoring will continue until the moment they are released, either because they have completed their sentence or because they have received some legal benefit.

(7) The judicial provisional detention order should never be implemented in a police station.

Please refer to the comment in response to recommendation n. 3.

(8) No statement or confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means. The Government is invited to give urgent consideration to introducing video and audiotaping of proceedings in police interrogation rooms.

Brazilian Law confers legitimacy on confessions as evidence. Any alteration in this provision in the law would require that a Bill of Law on the matter be sent to the National Congress. The Special Rapporteur's recommendation will be submitted to the commission of jurists charged with revising the Penal Code for their consideration. Nevertheless, the possibility of instituting a pilot project to install interrogation room video equipment in metropolitan regions to which the National Public Safety Plan has given priority is currently being studied.

(9) Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment.

The rule that places the burden of proof on those making allegations is rooted in a legal provision. Placing the burden of proof elsewhere in the case of torture or ill-treatment would require that a Bill of Law amending current legislation be submitted to the National Congress. The Special Rapporteur's recommendation will be sent to the commission in charge of revising the Code on Penal Procedures.

(10) Complaints of ill-treatment, whether made to the police or other service itself or the internal affairs department of the service (corregedor) or its ombudsman (ouvidor) or a prosecutor, should be expeditiously and diligently investigated. In particular, the outcome should not be dependent only on proof in the individual case; patterns of abuse should be similarly investigated. Unless the allegation is manifestly ill founded, those involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where a specific allegation or a pattern of acts of torture or similar ill-treatment is demonstrated, the personnel involved, including those in charge of the institution, should be peremptorily dismissed. This will involve radical purging of some services. A start could be made by purging known torturers from the period of the military Government.

Every organization participating in the national campaign against torture will have to commit to making more vigorous efforts when investigating illegal acts and firing employees involved in acts of torture, within the constraints established by Administrative Law. One of the objectives of the national campaign will be to strengthen police Internal Affairs (Corregedoria) and Ombudsmen's offices (Ouvidoria). The National Forum of Police Ombudsmen, a consultative body linked to the Secretariat of State for Human Rights, should play a key role in such a process.

(11) All states should implement witness protection programs along the lines established by the PROVITA program for witnesses to incidents of violence by public officials, which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken.

Pursuant to a PNDH target, the Secretariat of State for Human Rights has established the National System to Assist Threatened Victims and Witnesses, as part of the federal service to protect state-level services (12 States have participated thus far). In 2000, the National System was responsible for providing protection and assistance to 328 people, of whom 256 were still in the network at the end of that year. These figures, in conjunction with the fact that no casualty has ever been registered and that no attempt has ever been made against any of the beneficiaries of the program, reinforces the credibility of the Brazilian model. The Brazilian Government has budgeted ten times as much money as was initially available in 2000 for the program in the year 2001, which should be enough to perfect the system

and permit its expansion to include six more States by mid-2002. The Service to Protect Special Deponents, coordinated by the Federal Police and designed to guarantee protection for defendants collaborating with the police and for witnesses who do not meet the requirements of the National System, has been in place since June 2000. Steps should be taken to ensure careful consideration of special measures designed to protect detained persons who have been threatened by police or inmates because of their complaints of torture and ill-treatment. A key measure would be to transfer the prisoner to a different detention facility in another State or to Federal Police cells for a specific time and as long as they continue to be at risk.

(12) Prosecutors should bring charges under the 1997 law against torture with the frequency dictated by the scope and gravity of the problem and request that judges enforce the laws provisions prohibiting bail of those charged. Attorneys-General, with the material support of gubernatorial and other relevant state authorities, should assign sufficient qualified and committed prosecutorial resources for the criminal investigation of torture and similar ill-treatment and for any appellate proceedings. In principle, the prosecutors in question should not be the same as those responsible for prosecuting ordinary criminality.

As part of its national campaign against torture, the Secretariat of State for Human Rights will be providing sensitivity training and other courses to those in the legal community, including members of the Public Ministry and the Judiciary. Among other things, such courses should underscore the fact that those accused of the crime of torture do not have a right to bail, and the fact that a special risk pertains when the accused person is let out of

jail for any reason. Since the Brasilia seminar on the enforcement of the law on torture, the Public Ministry has denounced a growing number of acts of torture. Recent cases in Sorocaba, in the State of São Paulo, and in the States of Goiás and Minas Gerais, involving large numbers of *delegados* and police officers indicted under Law 9455, are an example of this trend.

(13) Investigations of police criminality should not be under the authority of the police themselves, in principle, an independent body with its own investigative resources and personnel. As a minimum, the Office of the Public Prosecutor should have the authority to control and direct the investigation. They should also have unrestricted access to police stations.

The decision to withdraw investigations of police from the jurisdiction of the civil and military police would require a deep-seated reorganization of police forces in Brazil. The National Congress has debated this issue extensively and in great detail. Bill of Law 9299/97, currently pending in Congress, seeks to change Law 9299/97, which grants jurisdiction over military police who have committed intentional crimes against life to the regular justice system. The Bill of Law expands this jurisdiction to include crimes of intentional bodily harm as well as all crimes listed in laws passed after the enactment of the Penal Code. Another provision strengthens the role of the Public Ministry when following up on police inquiries. A similar provision in the case of investigations into crimes committed by civilian police is worth discussing.

(14) Positive consideration at the federal and state levels should be given to the proposal to create the function of

investigating judge, whose task would be to safeguard the rights of persons deprived of liberty.

Under Brazil's legal system, the judges in charge of penal execution are also responsible for safeguarding the rights of persons condemned to deprivation of liberty. Similarly, *juizes de instrução* (examining magistrates or investigative judges) should oversee the rights of defendants until a sentence has been pronounced. During the police investigation phase, the judge into whose presence the defendant must be taken within the 24 hours stipulated by law is also responsible for carefully monitoring the physical condition of the prisoner and for taking immediate action if any irregularities in police procedures are discovered. This point should be emphasized in training courses.

(15) If for no other reason than to bring an end to chronic overcrowding in places of detention (a problem that building more detention places is unlikely to be able to solve), a program of awareness-raising within the judiciary is imperative to ensure that this profession, at the heart of the rule of law and the guarantee of human rights, becomes as sensitive to the need to protect the rights of suspects, and indeed of convicted prisoners, as it evidently is to repress criminality. In particular, the judiciary should take some responsibility for the conditions and treatment, which befall those they order to remain in pre-trial detention or sentence to terms of imprisonment. When dealing with ordinary criminality, they should also be reluctant, when alternative charges are available, to proceed with charges that prevent the grant of bail, rule out alternative sentences, require closed-regime custody, and limit progression of sentences.

With regard to steps to be taken to alleviate the problem of overcrowding, the Secretariat of State for Human Rights will foster the implementation of proposals mentioned in response to recommendation three, and will attempt to make the judiciary aware of the importance of such measures. In the year 2000, the National Public Safety Fund allocated approximately R\$102 million to build and refurbish detention facilities.

(16) For the same reason, the law on heinous crimes and other relevant legislation should be amended to ensure that often-long periods of detention or imprisonment are not imposable for relatively low-level criminality. The crime of "disrespecting authority" (desacatar funcionário público no exercício de sua função)¹ should be abolished.

One of the measures designed to reduce overcrowding in prisons, temporary detention centers and police stations will be the effort to define more precise criteria to be used when deciding if an illicit act is actually one of the crimes listed in the Law on Heinous Crimes. As an example, persons arrested for carrying small amounts of narcotic drugs, even drugs not meant for the person's own consumption, should be indicted under Article 16 of the Law on Toxic Substances (Law 6368/76), and not under Article 12 of the same law. Article 12 characterizes the behavior in question as drug trafficking, in which case the Law on Heinous Crimes requires that the entire sentence be served under a closed-door regime. The consciousness-raising training courses for the Judiciary and the Public Ministry should cover this point. Abolishing the crime of disrespect for authority, however, is a more problematic issue, since in practice this legal provision is the only way in which representatives of the Government can defend themselves

during the legitimate exercise of their responsibilities against reprehensible attitudes on the part of individuals.

There should be enough public defenders to ensure that legal advice and protection are available for every person deprived of liberty from the moment of arrest.

The Federal Public Defenders Office is planning to increase its staffing levels. The Secretariat of State for Human Rights will fight to promote the creation of State Public Defenders Offices in every state in Brazil, with enough resources to allow them to efficiently discharge their duties.

(18) Greater use should be made of and the necessary resources provided for such institutions as community councils, state councils on human rights and police and prison ombudsmen. In particular, fully resourced community councils, which include representatives of civil society, notably human rights non-governmental organizations, with unrestricted access to all places of detention and the power to collect evidence of official wrongdoing, should be established in each state.

Pursuant to PNDH priorities, the Secretariat of State for Human Rights has fostered the creation of state-level human rights councils and programs, together with police ombudsmen's offices. Specific action will be taken by the National Secretary of Justice to strengthen the role of the National Penitentiary Council and of community councils, particularly with regard to unannounced visits to places of detention.

(19) The police should be unified under civilian authority and civilian justice. Pending this, Congress should approve the draft law submitted by the federal Government

to transfer to the ordinary courts jurisdiction over manslaughter, causing bodily harm and other crimes including torture committed by the military police.

Currently the Legislative Branch is considering a number of proposals to change the organization of the civilian and military police forces. The National Forum of Police Ombudsmen has presented proposals requesting the unification of these two police forces to the Presidents of the Chamber of Deputies and the Senate. Although the discussion continues to be inconclusive, it is still ongoing in the National Congress. Bill of Law 22/97 may prove to be outdated if proposed constitutional amendment 29/2000 is approved. Among other things, this constitutional amendment introduces the concept that only judges from the regular justice system would be allowed to judge cases of crimes committed by military personnel against civilians.

(20) Police stations (*delegacias*) should be transformed into institutions offering a public service. The "clean police stations" (*delegacias legais*) being pioneered in the State of Rio de Janeiro is a model to be emulated.

There are several cases among Brazil's states in which police stations have been transformed into institutions that actually provide public services. In Rio de Janeiro, the state government has expanded the *delegacia legal*² program. Currently, there are 14 *delegacias legais*, which should total 80 by the end of this year and should replace all police stations in this State by late 2002.

(21) A qualified medical professional (a doctor of choice, where possible) should be available to examine every person on being brought to and on leaving a place of detention.

He/she should also have the necessary medicines to meet the detainees' medical needs and the authority to have the detainees transferred to a hospital independent of the detaining authority if those needs cannot be met. Access to the medical profession should not be dependent on the personnel of the detaining authority. Professionals working in institutions of deprivation of liberty should not be under the authority of the institution, nor the political authority responsible for it.

The National Secretariats for Justice and Public Safety intend to sign agreements with Medical Schools, Nursing Schools and Dentistry Schools, in order to ensure that prisoners will receive proper medical and dental treatment. A discussion is needed to determine ways in which to guarantee a prisoner's right to be taken to receive medical attention without leaving that decision solely in the hands of the same people who are responsible for the custody of the prisoners, such as *delegados*, prison directors, police officers or prison guards.

(22) The forensic medical services should be under judicial or other independent authority, not under the same governmental authority as the police; nor should they have a monopoly of expert forensic evidence for judicial purposes.

The Bill of Law suggested by the National Forum of Police Ombudsmen on the unification of police forces would require that forensic specialists be full career staff members in the Judiciary. The Secretariat of State for Human Rights feels that investigations will only be truly neutral if forensic experts and employees of Medical Examiner's Offices are granted independence.

² TN: In Portuguese the word *legal* means both "legal" and also "first rate" or "excellent", in slang.

(23) The appalling overcrowding in some provisional detention facilities and prisons needs to be brought to an immediate end, if necessary by executive action, for example by exercising clemency in respect of certain categories of prisoners, such as first-time non-violent offenders or suspected offenders. The law requiring separation of categories of prisoner should be implemented.

The National Secretariat of Justice has set up a program to significantly expand the use of alternative sentencing, so that only those sentenced to four years of imprisonment or longer will be sent to penitentiaries. Seven states are already paying for state centers to provide support for and monitoring of alternative sentencing (as part of a project initiated in September 2000), under an agreement signed with an additional fifteen States. The expectation is that every state in Brazil will have one of these centers by late June 2001. The National Secretariat of Justice is lending its support to the creation of special courts for drug addicts (Drug Courts) designed to keep people out of jail if they have committed minor crimes that are directly, or indirectly, related to drugs. Instead such people would receive medical or psychological treatment. Under Brazilian law, persons receiving such sentences may benefit from amnesties, clemency or pardons. In practice, the only benefit that has been granted has been a pardon, particularly at Christmas time. The concession of amnesties or clemency depends on a set of requirements set forth in the Legislative or Executive Act that grants the benefit, but these benefits have not been granted customarily under current Brazilian penitentiary policy. Separation of prisoners by categories, as required by the Law on Penal Execution, merits priority attention by the National Secretariat of Justice's Action Plan for 2001.

(24) There needs to be a permanent monitoring presence in every such institution and in places of detention of juveniles, independent of the authority responsible for the institution. The presence would in many places require independent security protection.

In the case of adolescents placed in closed facilities or subject to re-socialization programs, the National Council on the Rights of Children and Adolescents (CONANDA) should act in an increasingly participatory fashion to monitor and follow up on denunciations of acts of torture in centers created to care for adolescents in conflict with the law. CONANDA has held meetings in a number of States to touch upon specific problems involving institutions such as FEBEM in São Paulo, described in detail in the Special Rapporteur's report. As to adults, the National Secretariat of Justice will be signing agreements with the Brazilian Bar Association (OAB) and non-governmental organizations with a view to establishing an independent monitoring system linked to community councils.

(25) Basic and refresher training for police, detention personnel, public prosecutors and others involved in law enforcement that would include human and constitutional rights subjects, as well as scientific techniques and other best practices for the professional discharge of their functions, needs to be provided urgently. The United Nations Development Programme's human security programme could have a substantial contribution to make here.

Please refer to comments above in response to the Special Rapporteur's recommendations regarding the question of training for police, penitentiary staff members, Public Ministry staff members and other members of the law enforcement community. The issue of technical cooperation

in the field of training can be discussed on the occasion of a visit to Brazil by a technical mission from the United Nations office of the High Commissioner for Human Rights in the upcoming month of June.

(26) The proposed constitutional amendment that would under certain circumstances permit the federal Government to seek Appeal Court authorization to assume jurisdiction over crimes involving violation of internationally recognized human rights should be adopted. The federal prosecutorial authorities will need substantially increased resources for them to be able effectively to discharge the new responsibility.

The Secretariat of State for Human Rights has included the proposal that the Constitution be amended to federalize human rights crimes on its list of priority actions to be taken by the Legislative Branch, submitted by the Ministry of Justice in the year 2001.

(27) Federal funding of police and penal establishments should take account of the existence or otherwise of structures to guarantee respect for the rights of those detained. Federal funding to implement the previous recommendations should be available. In particular, the law on fiscal responsibility should not be an obstacle to giving effect to these recommendations.

The Secretariat of State for Human Rights has established a prerequisite that must be met before budget disbursements can be used in project implementation. This prerequisite states that the states must first fulfil certain conditions relating to the promotion and protection of human rights. The National Secretariats of Justice and Public Safety should adopt a similar system with regard to disbursements of funds for each of their budget items.

(28) The Government should give serious and positive consideration to accepting the right of individual petition to the Committee against Torture, by making the declaration envisaged under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Brazilian Government is currently examining this issue and will respond to the Special Rapporteur's suggestion in due time.

(29) The Government is also urged to consider inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country.

Pursuant to a decision by the Ministry of Justice, with the approval of the Council for the Protection of the Rights of Human Beings (CDDPH), the Brazilian Government is extending an invitation, through its Permanent Mission in Geneva, to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to visit Brazil in the near future, at a date to be decided.

(30) The United Nations Voluntary Fund for the Victims of Torture is invited to consider sympathetically requests for assistance by non-governmental organizations working for the medical needs of persons who have been tortured and for the legal redress of their grievance.

Brazil defends the work of the United Nations Voluntary Fund for the Victims of Torture and contributed money to the fund in 1985, 1986, 1988, 1992 and 1997. The Brazilian government plans to remedy its situation with regard to the contributions announced for 1995, 1996 and 1998, and will also give consideration to the possibility of making a new contribution to the Fund.

16. The information received from State officials on the individual cases mentioned in the Special Rapporteur's report will be referred directly to the Office of the United Nations High Commissioner for Human Rights.

ⁱ Article 331 of the Penal Code.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/165
27 April 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 9 (a)

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD, INCLUDING:**

QUESTION OF HUMAN RIGHTS IN CYPRUS

**Letter dated 18 April 2001 from the Permanent Representative of Turkey
to the United Nations Office at Geneva addressed to the United Nations
High Commissioner for Human Rights**

I have the honour to transmit herewith a letter dated 9 April 2001 addressed to you by His Excellency Mr. Tahsin Ertugruloglu, the Minister for Foreign Affairs and Defence of the Turkish Republic of Northern Cyprus.

I should be grateful if the letter* could be circulated as an official document of the fifty-seventh session of the Commission on Human Rights under item 9 (a) of the agenda.

(Signed): Murat SUNGAR
 Ambassador
 Permanent Representative

* Reproduced as received, in the language of submission only.

Annex



**TURKISH REPUBLIC OF NORTHERN CYPRUS
MINISTRY OF FOREIGN AFFAIRS AND DEFENCE**
(Lefkoşa via Mersin-10, Turkey)

9 April 2001

Madame High Commissioner,

I have the honour to refer to the letter dated 2 January 2001 addressed to you by the Greek Cypriot representative in Geneva, Mr. Alexandros Vikis, in connection with the arrest and detention by the Turkish Cypriot police of Greek Cypriot national Mr. Fanicos Tsiakoumzas (E/CN.4/2001/129 of 20 February 2001). We regret the fact that a purely criminal legal matter has been typically internationalised by the Greek Cypriot administration for political gain.

I wish to stress, at the outset, that there is no "occupation" in Cyprus as alleged by the Greek Cypriot representative, but a lawful presence based on international treaties. Turkey's intervention in Cyprus was undertaken in accordance with her rights and obligations under the Treaty of Guarantee of 1960 and the Turkish forces are in Cyprus with the full consent of the Turkish Cypriot people who, by exercising their inherent right to self-determination, established the Turkish Republic of Northern Cyprus (TRNC) in November 1983, twenty years after having been left stateless by the Greek Cypriots. It should be understood that the presence of the Turkish forces in Northern Cyprus, particularly in the absence of a comprehensive agreement, is a vital security requirement for the Turkish Cypriot people. It serves as a deterrent against the repetition of Greek-Greek Cypriot aggression against the Turkish Cypriots as occurred during the 1963-1974 period, which is well documented in the relevant reports of the UN Secretary-General as well as those of the international news media (see Annex).

H.E. Ms. Mary Robinson
United Nations High Commissioner
for Human Rights
Office of the United Nations High Commissioner
for Human Rights
Geneva.

There is no question of the Government of the Republic of Turkey exercising jurisdiction in the TRNC, which has its own democratically elected Government, exercising full and exclusive authority and jurisdiction over the territory and people of the State. Turkey, therefore, cannot be held accountable for the policies and/or actions of the legitimate authorities of the TRNC. May I recall that UN-sponsored talks have always been held between the two equal parties in Cyprus aimed at reconciliation and based on partnership. Turkey and Greece, as the two "motherlands", or anybody else for that matter, have never been a party to the talks process.

With regard to the ruling of the European Court of Human Rights concerning the case of Loizidou vs. Turkey, the Turkish Cypriot party has repeatedly stressed that reciprocal property claims of both sides are one of the "core issues" and can only be addressed and settled between the two parties within the context of an overall agreement. It should be recalled that one of the parameters agreed upon during past phases of the UN-sponsored talks was that, in the particular circumstances of Cyprus, the only realistic and humane way to resolve this issue was, and still is, through a global exchange of properties and/or compensation. This is a logical consequence of the voluntary population exchange Agreement of 2 August 1975, subsequently, implemented through UNFICYP, the UN Peacekeeping Force in Cyprus. The Turkish Cypriot party has done its share on this issue and proposed the establishment of a joint property claims commission with a view to resolving this issue on the basis of the said principle. However, the Greek Cypriot party chose to reject this constructive proposal.

The ruling ignores the fact that the two sides in Cyprus are separated by a "green line" since 1963 and by a cease-fire arrangement since 1974, monitored by the UN. It further disregards the reality of the voluntary regrouping of the Turkish Cypriot and Greek Cypriot populations under the above-mentioned voluntary exchange of populations Agreement. Furthermore, the ruling disregards the fact that a buffer zone, under the control of the UN Peacekeeping Force in Cyprus, has been established between the respective territories of the TRNC and the Greek Cypriot administration.

As for the case of Mr. Panicos Tsiakourmas, he was neither abducted nor subjected to ill-treatment, but lawfully arrested by the TRNC police. On 12 December 2000, Mr. Tsiakourmas was arrested by the Narcotics Department of the Turkish Cypriot police near the village of Bayarmudu in TRNC territory on suspicion of dealing in narcotics. Over a kilo of cannabis was found in his possession and Mr. Tsiakourmas was subsequently brought before the Lefkoşa District Court on the same day, which ordered his detention. UN officials in Cyprus were duly informed about the incident

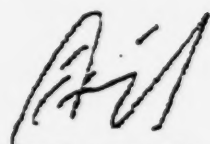
and the detainee has been examined by an UNFICYP doctor who found his medical condition fully satisfactory. Mr. Tsiakourmas continues to be under the care and supervision of a Turkish Cypriot specialist, namely Dr. Hasan Sav, and is visited regularly by an UNFICYP physician, as well as a family doctor.

In accordance with the legal procedure, Tsiakourmas had been detained at the Lefkoşa Central Prison until his preliminary inquiry began at the Gazi Mağusa District Court on 8 February 2001. On 15 February, the Court committed the case to the Assize Court and his case came before the Gazi Mağusa Assize Court on 21 February where it is currently continuing.

Mr. Tsiakourmas has been, and is being, treated with full care and respect to the due process of law. He has retained a team of lawyers, including a Turkish Cypriot lawyer, Mr. Mehmet Aziz, who have full access to him, and Mr. Tsiakourmas benefits from all his legal rights, including full medical care and visits by his family. Greek Cypriot allegations aimed at politicising this case which is still under trial, are unfounded and constitute an unwarranted interference with the due process of law in a democratic country with an independent judiciary. For your Excellency's information, these facts are confirmed, among others, in the annual reports of the US Department of State on human rights practices in Cyprus, which most currently (2000) states that "democratic principles are generally respected" and that "the judiciary is independent of executive and military influence" in Northern Cyprus.

I am confident that, in the interest of fairness and impartiality, this communication will be brought to the attention of all to whom the above-mentioned letter of the Greek Cypriot representative has been circulated.

Please accept, Madame High Commissioner, the assurances of my highest consideration.



Tahsin Ertuğruloğlu
Minister of Foreign Affairs
and Defence



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2001/166
27 April 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 8

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE**

**Letter dated 27 April 2001 from the Permanent Representative of the
Libyan Arab Jamahiriya to the United Nations Office at Geneva
addressed to the Chairperson of the Commission on Human Rights**

I have the honour to enclose herewith a resolution transmitted by the President of the Islamic Committee of the International Crescent (ICIC) which is a result of the deliberations of the coordination meeting of the Red Crescent Red Cross National Societies in the Member States of the Organization of the Islamic Conference, which was held at the headquarters of the OIC General Secretariat in Jeddah, Kingdom of Saudi Arabia, on 21 and 22 April 2001.

I would appreciate if you could circulate the attached resolution* to all members of the Commission as an official United Nations document under item 8 of the fifty-seventh session of the Commission on Human Rights, entitled: "Question of the violation of human rights in the occupied Arab territories, including Palestine".

(Signed) Najat AL-HAJJAJI
Ambassador
Permanent Representative

* Reproduced as received, in the language of submission only.

Annex

**The Humanitarian Situation In
The Palestine Occupied Territories**

The joint meeting of Red Crescent/Red Cross in the Member States of the Organization of the Islamic Conference (OIC) held in Jeddah – Saudi Arabia on 21-22 April 2001, thoroughly reviewed the seriously deteriorated humanitarian situation in the Palestinian Occupied Territories.

- Taking note of the magnitude of the Israeli aggressions against the Palestinian population, including destructions of houses, and agricultural lands, and siege of civilians, in violation of all international conventions.
- Deeply alarmed by the increasing number of civilian victims, in particular children, women and elderly people.
- Deeply concerned about the flag massive violations of the 4th Geneva Convention by Israeli authorities in the Palestine Occupied Territories.
- Deplores the actions and measures taken by the Israeli occupying forces against the Ambulances, Red Crescent First Aiders and the obstruction of humanitarian supplies to the victims, disrespect of the Red Crescent Emblems in violation of the Fourth Geneva Convention and the first additional protocol.
- Calling upon the international community to provide protection and respect of human rights in the Palestinian Occupied Territories.
